

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
Proposing a Market Structure and Rules for the  
Northern California Natural Gas Industry for the  
Period Beginning January 1, 2003 as Required by  
Commission Decision 01-09-016. (U 39 G)

Application 01-10-011  
(Filed October 8, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING THE MOTION TO POSTPONE THE PROCEDURAL  
SCHEDULE FOR LITIGATION OF THE SCOPING MEMO ISSUES**

**Summary**

On September 5, 2002, Pacific Gas and Electric Company (PG&E) filed a "Motion To Postpone The Procedural Schedule For Litigation Of Scoping Memo Issues, And Request For Shortened Time For Responses." The motion requests that the Commission postpone the existing schedule for submitting testimony and for the holding of evidentiary hearings on the Scoping Memo issues, and that a prehearing conference be held in January 2003, to set the new dates for the submission of testimony and evidentiary hearings.

Today's ruling grants PG&E's motion to postpone the current procedural schedule on the terms and conditions specified in this ruling. The current procedural schedule shall be revised, and evidentiary hearings will be held on March 10, 2003 through March 14, 2003.

**Background**

Following the filing of PG&E's motion, an Administrative Law Judge's (ALJ) ruling was issued on September 6, 2002, which granted PG&E's request to

shorten the time for interested persons to file a response to the motion. Interested parties had until September 10, 2002, to respond to PG&E's motion. Responses to PG&E's motion were filed by the Office of Ratepayer Advocates (ORA), California Department of General Services (DGS), Northern California Generation Coalition (NCGC), Calpine Corporation (Calpine), Canadian Association of Petroleum Producers (CAPP), and a joint response by Mirant Americas, Inc. and the California Cogeneration Council (Mirant/CCC). On September 12, 2002, PG&E tendered a reply to the parties who oppose the postponement of the procedural schedule, and requested permission for leave to file the reply.

PG&E's motion requests that the procedural schedule for the issues identified in the February 26, 2002 Scoping Memo, and further discovery, be postponed for a four-month period. PG&E requests that a prehearing conference be scheduled in January 2003 to establish the dates for submitting testimony and evidentiary hearings, with the goal of completing the hearings in March 2003.

Under the current schedule, the prepared testimony on the Scoping Memo issues are to be served on the parties "within five weeks after the Commission takes action on whether to adopt or reject the Gas Accord II Settlement Agreement, and the reply testimony shall be served electronically and by mail on the parties to this proceeding four weeks after the prepared testimony is served on the parties." (ALJ Ruling, July 9, 2002, pp. 4-5.) The dates for the evidentiary hearings on the Scoping Memo issues were to be set in a future ruling.<sup>1</sup>

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<sup>1</sup> Although the Gas Accord II Settlement Agreement called for the evidentiary hearings to be held November 12 through November 20, no ruling prior to today set the dates of the evidentiary hearing.

On August 22, 2002, the Commission adopted Decision (D.) 02-08-070. This decision granted the joint motion to approve the Gas Accord II Settlement Agreement. D.02-08-070 was mailed to the parties on August 26, 2002.

### **Position of the Parties**

PG&E's motion contends that there is no compelling need to litigate the Scoping Memo issues this fall because the Gas Accord II Settlement Agreement fixed the transmission and storage rates for PG&E for a one-year period commencing January 1, 2003 and April 1, 2003, respectively. As a result, no rate changes will be implemented prior to January 1, 2004. PG&E also states that the schedule should be postponed because by early 2003, the parties expect there will be greater certainty regarding the outcome of PG&E's proceedings in Bankruptcy Court. In addition, holding hearings during the first quarter of 2003 will provide sufficient time for the issuance of a final Commission decision before January 1, 2004. PG&E states that it is an appropriate time to review whether the schedule should be postponed.

PG&E states that the request for postponing the schedule was not just PG&E's desire, but that a large number of other parties favored a postponement as well.

ORA and Mirant/CCC are in favor of PG&E's request for a postponement.

DGS does not oppose the postponement, but disagrees with PG&E's request that further discovery be suspended. DGS also recommends that PG&E be ordered to submit a full cost of service study in its testimony no later than December 1, 2002. DGS also seeks guidance on whether this proceeding will be the forum for reviewing the prudence of PG&E's gas structure for only 2004, or for 2004 and beyond.

NCGC points out that the Commission should not attempt to plan the schedule for this proceeding around PG&E's bankruptcy proceeding. NCGC supports a short extension of the schedule, but opposes suspending the schedule and further discovery until January 2003. NCGC contends that suspending the schedule and discovery until January 2003 "would unduly expose customers to uncertainty about their ability to finalize gas transportation and supply arrangements in a timely fashion for service to commence by January 1, 2004," and delay this proceeding. NCGC proposes the following schedule:

PG&E Opening Testimony	Friday, November 15, 2002
ORA/Intervenor Opening Testimony	Friday, December 13, 2002
Reply Testimony (all parties)	Friday, January 17, 2003
Hearing	January 27-February 7, 2003
Opening Briefs	Friday, March 7, 2003
Reply Briefs	Friday, March 28, 2003
Proposed Decision	June 27, 2003

If the above schedule is not adopted, NCGC proposes that a prehearing conference be held in September 2002 to adopt a new procedural schedule.

NCGC states that PG&E should present a Results of Operation so that the parties can evaluate PG&E's performance under the Gas Accord, and a rate proposal for a forecasted 12-month period.

Calpine and CAPP oppose PG&E's motion to postpone the procedural schedule. They point out that the Gas Accord II Settlement Agreement, which was approved in D.02-08-070, contained the following specific dates for the Scoping Memo Issues:

October 1, 2002	Prepared testimony served on parties
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October 30, 2002                      Reply testimony served on parties

November 12-20                      Evidentiary hearings

CAPP points out that it, and other parties, agreed to the Gas Accord II Settlement Agreement because the settlement provided a schedule for expeditiously addressing the Scoping Memo issues. Calpine contends that D.02-08-070 provided assurance that the adoption of the settlement would not affect the resolution of the Scoping Memo issues, nor would it impact the procedural schedule adopted in the July 9, 2002 ALJ ruling. PG&E's pending bankruptcy proceeding should not be used as an excuse to delay the resolution of the Scoping Memo issues. CAPP and Calpine assert that any further delay to the schedule may delay a timely resolution of the Scoping Memo issues.

If the Commission is inclined to grant a delay in the schedule, CAPP and Calpine suggest that the Commission return to the course that it set in D.01-09-016, and order PG&E to file a complete Gas Accord II application proposing a market structure, rates, and rules for the period beginning January 1, 2004, and that PG&E be directed to make this filing in mid-December 2002 or in early January 2003.

## **Discussion**

PG&E seeks permission to file its reply that it tendered on September 12, 2002. PG&E's request for leave to file its reply is granted, and the Docket Office shall be directed to file the reply as of September 12, 2002.

The Gas Accord II Settlement Agreement contained a schedule of dates for the submission of testimony and evidentiary hearings. In D.02-08-070, the Commission referenced the July 9, 2002 ALJ ruling as the schedule for the service of prepared testimony and reply testimony, and stated that a future ruling would set the dates of the evidentiary hearings. Although certain dates for addressing

the Scoping Memo issues were referenced in the settlement agreement, PG&E's motion to postpone the schedule apparently is favored by many of the parties who signed the settlement agreement. Accordingly, the schedule for resolving the Scoping Memo issues should be revisited in this ruling.

PG&E's request to postpone the Scoping Memo issues until a prehearing conference is held in January 2003 will not be adopted. Such a request could interfere with the timely processing of these issues since under PG&E's motion, the service of testimony and the holding of hearings would not take place until sometime in February or March 2003 at the earliest.

However, since D.02-08-070 adopted the settlement to extend the terms of the Gas Accord for one year beginning on January 1, 2003, the need to have the Scoping Memo testimony served in September and October, with hearings in November, has been relaxed. Accordingly, a revised schedule, as set forth at the end of this ruling, will be adopted.

Before addressing the new schedule, several of the parties raised issues which need to be discussed.

DGS seeks clarification on whether this proceeding will only resolve the gas structure for 2004 or for subsequent years. DGS also requests that PG&E be ordered to submit a full cost of service study in its testimony no later than December 1, 2002.

The Commission previously addressed both of DGS' concerns in D.02-08-070. Regarding whether this proceeding will only resolve the gas structure for 2004 or for subsequent years, the Commission deferred to the settling parties on whether PG&E would file a new application or not, and stated that "subsequent events will shape the future gas structure for PG&E." On the cost of service study, the Commission stated that it was impractical for PG&E to

submit a cost of service study given the one-year extension, the open season process, and the upcoming winter season.

One of the issues identified in the Scoping Memo was how the existing Gas Accord structure has performed, and whether it is in the best interest of the state to continue this kind of structure (performance and best interest issue). A cost of service study could shed light on how the existing Gas Accord structure has performed, and whether such a structure should be continued. The performance and best interest issue could also assist the Commission in deciding what kind of gas structure should be established in future years for PG&E.

At the present time, and because of D.02-08-070, PG&E's pending application requests only that the existing gas accord structure be extended through the end of 2004. Thus, the focus of this proceeding is only on what the gas structure for 2004 should look like, and whether the existing Gas Accord structure should be continued in 2004. Before the Commission reaches the issue of whether the existing gas structure should be extended to last through the end of 2004, the Scoping Memo issues, including the performance and best interest issue, need to be addressed. (See Scoping Memo, pp. 10-11.) Accordingly, PG&E's prepared testimony shall include a cost of service study. To answer the performance and best interest issue, the prepared testimony of PG&E and the other parties to this proceeding should also address whether the existing Gas Accord structure should continue in 2004, or should a different kind of gas structure be adopted for PG&E in 2004.

As for DGS' concern about a multi-year gas structure, and the suggestion of CAPP and Calpine that PG&E be ordered to file a complete Gas Accord II application, PG&E's prepared testimony should not be required to propose rates and terms and conditions of service beyond 2005 at this time. As noted in

D.02-08-070, the future of the gas structure for PG&E in 2004 and beyond will depend on what happens in the Bankruptcy Court. Although the processing of this proceeding should not depend on what happens in Bankruptcy Court, subsequent events in that forum will shape the future gas structure for PG&E. Should the Commission prevail in Bankruptcy Court, the prepared testimony concerning the cost of service study and the other Scoping Memo issues provides the Commission with the flexibility to review PG&E's gas structure on a multi-year basis, rather than just a one year view of what the gas structure should look like in 2004.

NCGC believes that PG&E's testimony should include a Results of Operation and a rate proposal for the twelve month period. Both of those items should also be included as part of PG&E's prepared testimony for the Scoping Memo issues. Those two items will assist the Commission in evaluating how the Gas Accord structure has performed, and what the rates in 2004 should look like. (See Scoping Memo, p. 9.) NCGC's proposal that PG&E serve its testimony first should also be adopted.

PG&E's request to stop all further discovery until a prehearing conference is held in January 2003 is denied. Given the schedule adopted in today's ruling, discovery should continue.

The following procedural schedule to resolve the issues identified in the February 26, 2002 Scoping Memo and at pages 14 to 15 of D.02-08-070 shall be as follows:

PG&E Opening Testimony	December 9, 2002
Other Parties' Opening Testimony	January 27, 2003
Rebuttal Testimony (all parties)	February 28, 2003
Evidentiary Hearing	March 10-14, 2003



Additional Hearing Days if needed	March 17-19, 2003
Opening and Reply Briefs	To be decided.
Proposed Decision	To be decided.

**IT IS RULED** that:

1. Pacific Gas and Electric Company's (PG&E) September 12, 2002 request for leave to file a reply to the parties opposed to the postponement of the procedural schedule is granted.

a. The Docket Office is directed to file PG&E's reply as of September 12, 2002.

2. PG&E's motion to postpone the procedural schedule for litigation of the Scoping Memo issues is granted on the terms and conditions specified in this ruling. The procedural schedule set forth in the July 9, 2002 ruling shall be revised as set forth below.

a. The procedural schedule for the service of opening and reply testimony on the issues identified in the February 26, 2002 Scoping Memo and in Decision 02-08-070 shall be as follows: (1) PG&E shall serve its opening testimony on the service list to this proceeding on or before December 9, 2002; (2) the other parties shall serve their opening testimony on or before January 27, 2003; (3) all parties shall serve their rebuttal testimony on or before February 28, 2003; and (4) evidentiary hearings will commence on March 10, 2003 at 10:00 a.m., in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, and continue through March 14, 2003.

Dated September 30, 2002, at San Francisco, California.

/s/ JOHN S. WONG

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John S. Wong  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding the Motion to Postpone the Procedural Schedule for Litigation of the Scoping Memo Issues on all parties of record in this proceeding or their attorneys of record.

Dated September 30, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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